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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,993	05/27/2000	Richard Honea		9849

7590

03/26/2003

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/580,993

Applicant(s)

Honea

Examiner

Gail Verbitsky

Art Unit

2859



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan. 02, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case, the use of “consisting of” and “also consisting of” in lines 8, 11, 15 is improper because the first “consisting of” statement excludes a possibility of “also consisting of” statement for the same structure (in this case, indicia). Also, “consisting of at least one” in line 21 makes the claim language confusing because, once “consisting of” is used in the claim language, no more than one structure (in this case, common indicia line) can be claimed.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claim 2 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (U.S. RE 37212E) in view of Jones, Jr. (U.S. 5335421) [hereinafter Jones] and the Prior Art as stated in Fig. 1 by Sarasin (U.S. 4970797) [hereinafter Prior Art].

Marshall discloses in Fig. 1 a tape comprising a leading edge, a trailing edge, two longitudinal edges and a central portion; first indicia positioned along the entire length of the central portion of the tape, the indicia spaced at a distance D1 (1/8 or one eights of inch); second indicia positioned along the length of a first edge A, and equally spaced at a distance D2 which is different from the distance D1 (one inch); and third indicia positioned along the length of a second edge B, and equally spaced at a distance D3. In a broad sense, the tape of Marshall's is considered to be "disposable", since it can be disposed when it is damaged or worn out (the numerals A-B, D1-D3 have been added by the Examiner, see attachment # 1 to the Office Action).

Marshall does not disclose that the third indicia spaced at the distance D3 which is different from distances D1 and D2. In addition, Marshall does not explicitly state that the tape is disposable. Also, even though since the central portion indicia is a fraction of the indicia of the first edge A and the second edge B, there inherently will be times when a common line can be drawn through entire face of the tape from the first edge to the second edge, Marshall does not explicitly shows said common line.

Jones discloses in Fig. 1 a device in the field of applicant's endeavor, the device comprising a third indicia B equally spaced at a third distance D3 (as shown in Fig. 1, the

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distance D3 is equal $2/16$ of inch) and located at a second edge of a tape 5 (the numerals B, D3 have been added by the examiner, see attachment # 2 to the Office action).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the third indicia of the tape disclosed by Marshall with a third indicia, as taught by Jones, so as to have an edge with further different indicia/ different fractions of inch, than the other indicia in the tape in order to allow the user to measure different object with the desired accuracy relative to inch.

Prior Art shows in Fig. 1 a tape having a common indicia line extending through all three indices on a front face of the tape (see attachment # 3 to the Office Action).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a common indicia line extending through the front face of the tape, as taught by Prior Art, to the tape disclosed by Marshall, so as to allow the user to take the measurements in whole numbers and in fractions at the same time, and also to see the relationship between the measurements taken in whole and fraction numbers at a short glance.

Response to Arguments

3. Applicant's arguments with respect to claim 2 have been considered but are moot in view of the new ground(s) of rejection necessitated by the present amendment.

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Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices..

5. Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (703) 306-5473 Monday through Friday, 7:30 to 4:00 ET.

Any inquiry of general nature should be directed to the Group Receptionist whose telephone number is (703) 308-0956.

GKV



March 11, 2003

Diego Gutierrez, Supervisory patent examiner, TC 2800

attached #1

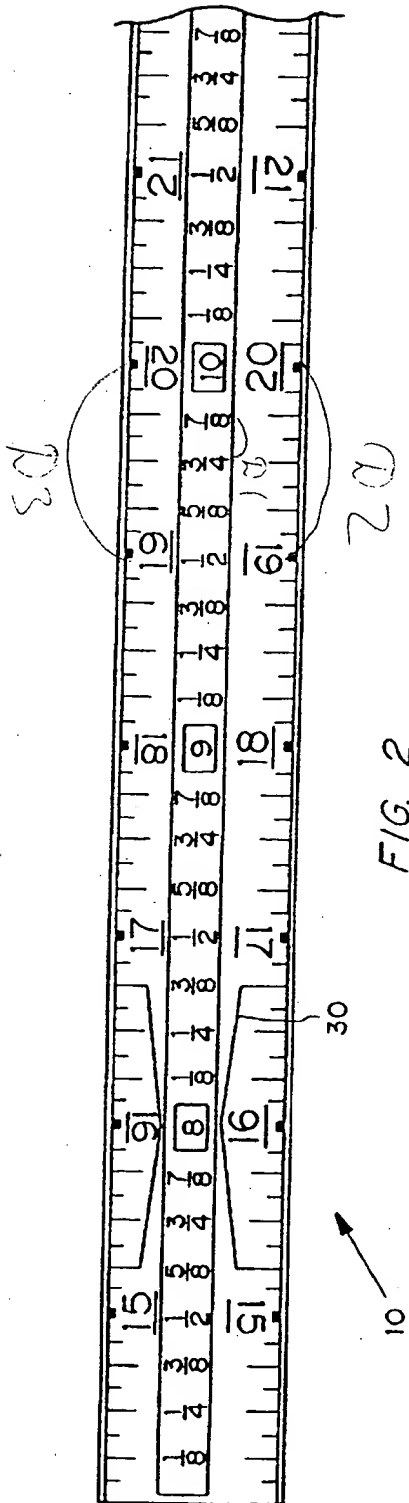
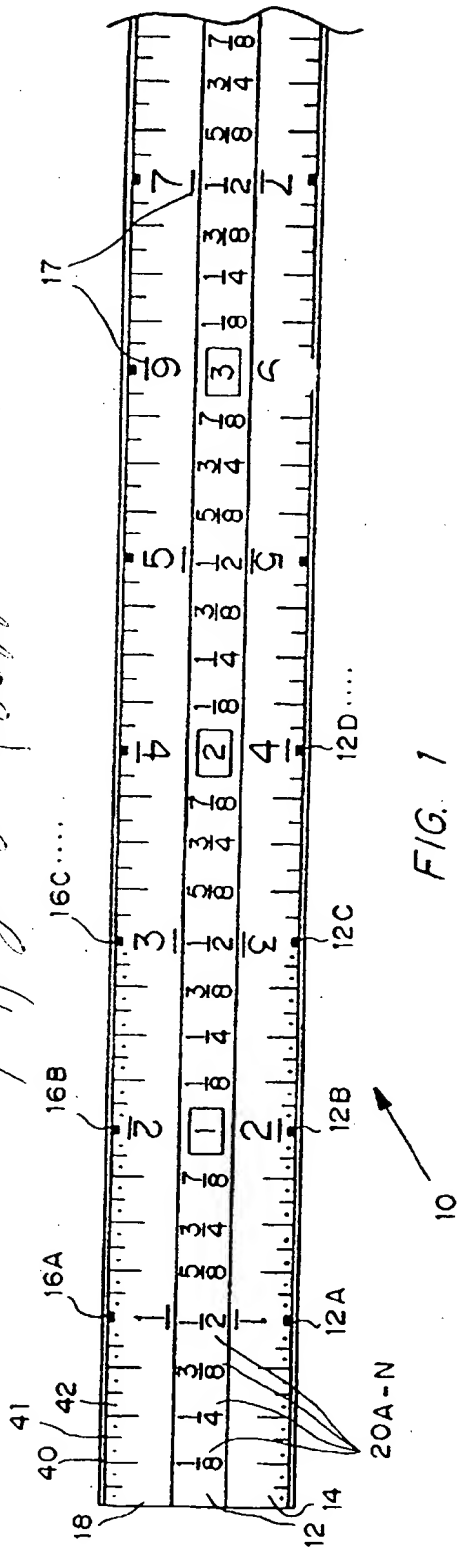


FIG. 1

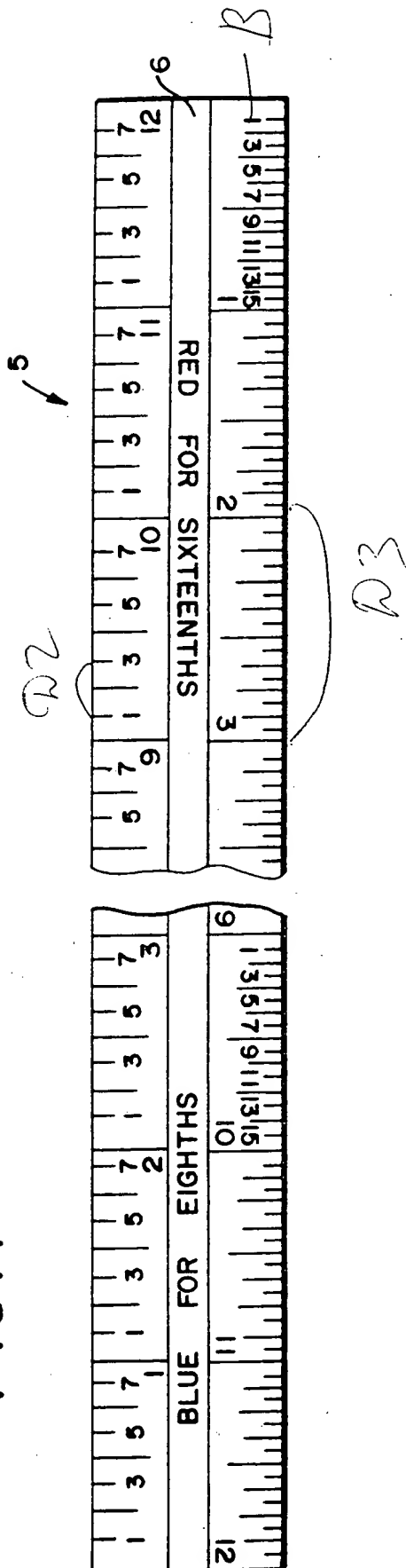
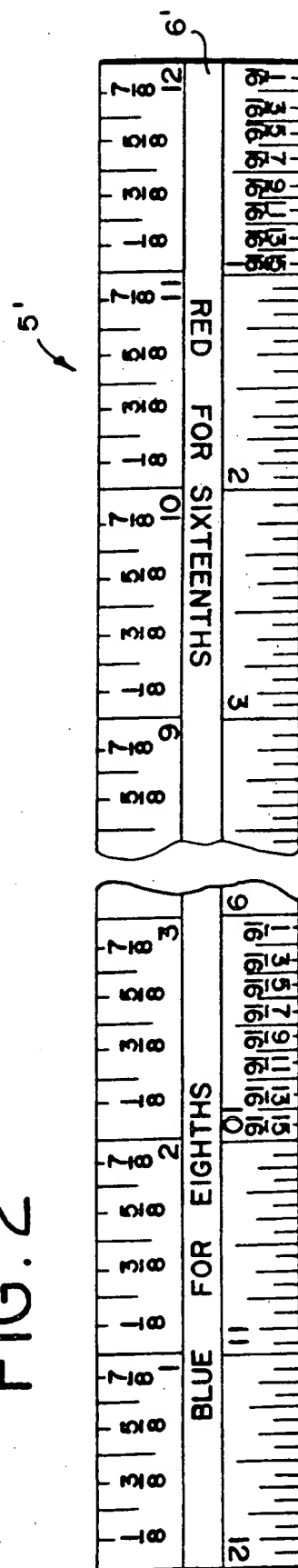
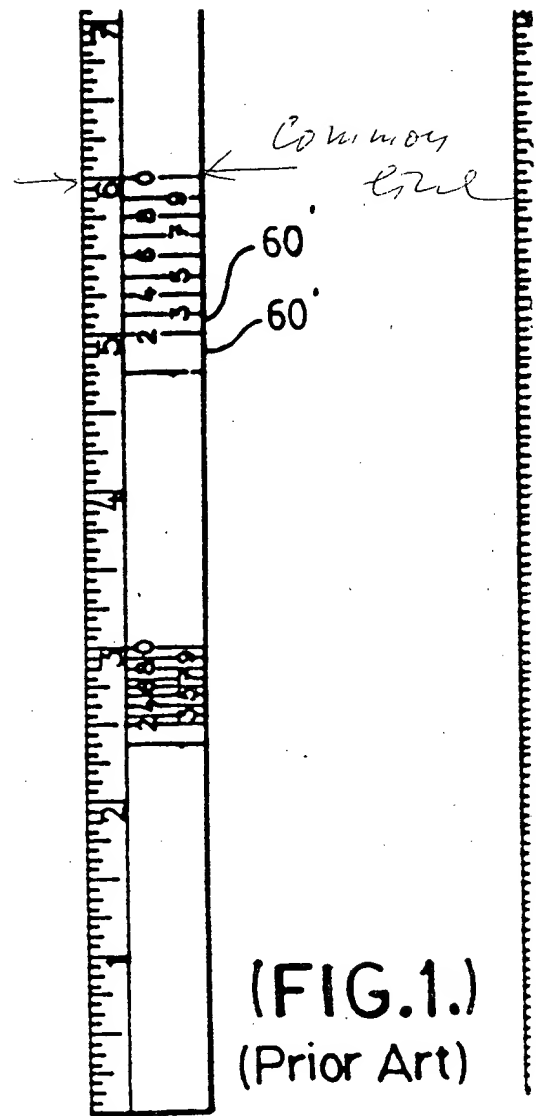


FIG. 2



2 H inches

Pror Art
by Sarasu



Attachment #3